



## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 575**

**[Docket No. NHTSA-2011-0177]**

**RIN 2127-AK83**

#### **Tire Fuel Efficiency Consumer Information Program**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of a March 30, 2010 final rule that established test methods to be used by tire manufacturers to generate comparative performance information in order to inform consumers about differences in the fuel efficiency (rolling resistance), safety (wet traction), and durability (treadwear) of replacement passenger car tires. The final rule also established reporting requirements for the generated performance information. In response to the petitions, today's final rule revises certain aspects of the reporting requirements and clarifies others, incorporates by reference a publication cited in the final rule but not included with the other publications incorporated by reference, and clarifies the scope of the program by amending the definition of the term, "replacement passenger car tires."

**DATES:** Today's final rule is effective **[PLEASE INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The

incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of June 1, 2010.

The various compliance dates for these regulations are set forth, as applicable, in § 575.106(e)(1)(iii).

Petitions for reconsideration must be received by **[PLEASE INSERT DATE THAT IS 45 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION, CONTACT:**

For policy and technical issues: Ms. Mary Versailles, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366-2057.

For legal issues: Mr. William H. Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366-2992.

**SUPPLEMENTARY INFORMATION:**

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- I. **Background**

- A. **Final Rule**

The Energy Independence and Security Act of 2007 (EISA)<sup>1</sup> included a requirement that NHTSA develop a national tire fuel efficiency consumer information program (TFECIP) to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability.

On June 22, 2009, NHTSA published a notice of proposed rulemaking (NPRM) for the TFECIP.<sup>2</sup> The NPRM proposed to require manufacturers to rate their tires using the ISO 28580 test methods for rolling resistance (fuel efficiency), and the existing uniform tire quality grading standards (UTQGS) test methods for wet traction (safety) and treadwear (durability). The NPRM also proposed to require replacement tires to be labeled for each of these three ratings using a 0 to 100 scale, and proposed to require manufacturers to report various data concerning replacement tires to NHTSA. The agency received over 600 pages of comments on the NPRM.

On March 30, 2010, NHTSA published a final rule specifying the test methods to be used to measure three aspects of tire performance: rolling resistance, wet traction, and

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<sup>1</sup> Pub. L. No. 110-140, 121 Stat. 1492 (Dec. 18, 2007).

<sup>2</sup> See Notice of Proposed Rulemaking, Tire Fuel Efficiency Consumer Information Program, 74 FR 29542 (June 22, 2009); Docket No. NHTSA–2008–0121–0014.

treadwear life.<sup>3</sup> The final rule also included revised reporting requirements for manufacturers. The final rule did not include any of the requirements for the consumer information and education portions of the TFECIP.<sup>4</sup> Instead, NHTSA announced that, based on the comments the agency had received, it had decided to conduct additional research before issuing a new proposal for these requirements.

## **B. Overview of Petitions for Reconsideration**

The agency received nine petitions for reconsideration of the March 2010 final rule, including one petition from the Rubber Manufacturers Association (RMA), a tire industry trade association, and eight petitions from individual tire manufacturers. Except for a supplemental petition filed by Bridgestone Americas Tire Operations, LLC (Bridgestone), the tire manufacturers' petitions indicated their support for the RMA petition and did not raise any additional issues or arguments. Therefore, only the issues raised by the RMA petition and the Bridgestone supplemental petition are addressed by this document. These issues are summarized below:

- RMA petitioned the agency to reconsider the final rule's requirement that tire manufacturers report the tire fuel efficiency (TFE) rating information as part of the Early Warning Reporting (EWR) data submissions.
- RMA petitioned the agency to clarify the section of the final rule requiring tire manufacturers to report new or different rating information to NHTSA and recommended separating the section into two distinct requirements, one for rating

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<sup>3</sup> See Final Rule, Tire Fuel Efficiency Consumer Information Program, 75 FR 15894 (Mar. 30, 2010); Docket No. NHTSA-2010-0036-001.

<sup>4</sup> Although the March 2010 final rule did not include requirements for how the performance information would be displayed, the final rule noted that Section 111 of EISA explicitly prohibits NHTSA from requiring permanent labeling on the tire for the purposes of tire fuel efficiency information (49 U.S.C. § 32204A(d)).

information for new tires and one for new or different rating information for existing tires. RMA further petitioned the agency to reconsider the requirement that new or different ratings be reported not more than 30 days after the receipt of information that would determine such new or different ratings.

- RMA petitioned the agency to reconsider the language used to establish the reporting requirements for exempted tires, asserting that the final rule was unclear as to whether a manufacturer is permitted to update its list of exempted tires, either by including new exempted tires on the list or by removing tires on the list that no longer meet the requirements for exemption.
- RMA petitioned the agency to incorporate by reference ASTM International E 501-08, “Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests,” (“ASTM E 501”), a publication that was cited in the final rule but for which a citation was not included with the other publications incorporated by reference in § 575.3.
- Bridgestone petitioned the agency to clarify the definition of “Replacement passenger car tire.”
- RMA offered comments regarding issues not decided in the March 2010 final rule, including: the metric for expressing rolling resistance; the determination of the ratings for rolling resistance, wet traction, and treadwear; the selection of the lab alignment tires and reference laboratory or laboratories consistent with ISO 28580; and the lead time for compliance with the requirements.

## **II. Petitions for Reconsideration and Agency’s Response**

### **A. Reporting Format and Information to be Reported**

The March 2010 final rule established reporting requirements for tire manufacturers, requiring each manufacturer to report to NHTSA the rolling resistance rating, wet traction rating, and treadwear rating for each stock keeping unit (SKU) it manufactures.<sup>5</sup> The final rule reduced the amount of required information contemplated in the NPRM, which had proposed requiring tire manufacturers to report the base test values upon which the ratings were calculated. Regarding the format, the final rule required rating information to be reported as extra columns in the EWR electronic data submissions required by Section 26 of Part 579, which requires tire manufacturers to report tire production information.

The purpose of the reporting requirements for the TFECIP is to provide consumers with a database that allows cross-comparisons of tire brands, and for the functioning of the online fuel economy calculator.

RMA petitioned the agency to reconsider the format of the reporting requirements. First, RMA cited the difference in reporting frequency between EWR information and TFECIP rating information. Specifically, RMA noted that EWR production information is submitted quarterly, while the final rule contemplated one-time reporting of TFECIP rating information for existing tires, with additional reporting of tire rating information for new tires relative to their introduction to the market. RMA asserted that because, in the vast majority of cases, TFECIP rating information would not change after the information was initially reported, requiring the information to be reported quarterly would impose an additional and unnecessary burden on tire manufacturers and increase the complexity of their EWR submissions.

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<sup>5</sup> These reporting requirements will be implemented as indicated in a forthcoming final rule (49 CFR § 575.106(e)(1)(iii)).

Second, RMA noted that the EWR program is managed by NHTSA's Office of Defects Investigation for the purpose of identifying potential safety issues, while the TFECIP rating information will likely be used and managed by NHTSA's Offices of Rulemaking and Vehicle Compliance for the purpose of providing consumer information. RMA indicated that, likewise, responsibility for reporting the two types of information will likely lie with different departments within each tire manufacturer. Accordingly, RMA contended that separating the reporting of each type of information would likely increase efficiency.

Third, RMA noted that the EWR electronic reporting system has input verification checks, and it was concerned that adding columns to the EWR data submission could potentially cause rejection of submissions, leading to delays and jeopardizing the manufacturers' ability to timely comply with the EWR requirements.

Fourth, RMA noted that the EWR submissions include some confidential information, while the TFECIP rating information is intended to be disseminated to the public. RMA indicated that separating the two types of submissions would streamline the data management process.

Finally, RMA cited Congress's contemplation of legislation that could change the EWR program and recommended that EWR and TFECIP submissions be separated so that the reporting of TFECIP rating information would not be inadvertently affected by the potential legislation.

Based on these reasons, RMA recommended that TFECIP rating information be submitted in a specified electronic format, such as a spreadsheet. RMA further recommended that the agency provide a template for manufacturers to use so that

TFECIP submissions would be in a consistent format and could be uploaded efficiently to NHTSA's consumer tire website.

Agency Response – The agency is granting RMA's request to separate the TFECIP rating information submissions from the EWR reports. The NPRM contemplated a reporting system consisting of both a spreadsheet template and an online data reporting system. The final rule mandated that tire rating information be submitted as extra columns in each manufacturer's EWR submission based on the rationale that such a format would impose a minimal burden on manufacturers. However, in light of RMA's comments, NHTSA agrees that the difference in reporting frequency between TFECIP submissions and EWR submissions would make it complicated for manufacturers to combine both submissions.

Accordingly, today's final rule eliminates the requirement that TFECIP rating information be submitted as extra columns in a manufacturer's EWR submission and, instead, requires that rating information be submitted to NHTSA by mail, facsimile, or e-mail. Additionally, because the tire rating information will no longer accompany the EWR submissions, this final rule requires that certain identification information that would have been contained in the EWR submissions be included with the separate rating information submissions. This required identification information includes the manufacturer's name, the brand name owner (if different than the manufacturer), the tire line, the SKU, and the tire size.

Because this identification information is now required by § 575.106, a new definition is being added to this section and an existing definition is being amended to clarify what information is required. The term "manufacturer" is not defined in Part 575.



In order to specify the meaning of this term for the purpose of the rating information submissions, as well as to clarify the applicability of the requirements of § 575.106, this final rule includes a definition of the term “manufacturer” in § 575.106 based on the definition used in Part 579, Reporting of Information and Communications About Potential Defects,<sup>6</sup> which specifies the EWR requirements. Additionally, the definition of the term “tire line” is amended to remove the phrase “or tire model.” The term “tire model” is not used anywhere else in the regulatory text, and, within the tire industry, the term is often used to represent the finite element or mathematical model of a tire, rather than the name a manufacturer uses to designate a tire product. Accordingly, to define it differently in § 575.106 could be potentially confusing.

At this time, the agency is not requiring a specific format for the submission of rating information. The agency is exploring the development of an online submission form and is considering the use of such a form as a future improvement to facilitate submissions.

In the NPRM, NHTSA proposed a reporting system consisting of both a spreadsheet template and an online data reporting system. The estimated reporting costs based on this proposed system were examined in detail in the Preliminary Regulatory Impact Analysis (PRIA).<sup>7</sup> In the Final Regulatory Impact Analysis (FRIA),<sup>8</sup> NHTSA responded to manufacturer comments on the initial estimates of these costs. However, NHTSA did not modify those estimates to account for the cost savings realized by combining the TFECIP reports with the EWR reports, and no comments regarding the

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<sup>6</sup> 49 CFR § 579.4.

<sup>7</sup> Preliminary Regulatory Impact Analysis, Notice of Proposed Rulemaking Replacement Tire Consumer Information Program Part 575.106, June 2009 (Docket No. NHTSA–2008–0121–0015.1).

<sup>8</sup> Final Regulatory Impact Analysis, Replacement Tire Consumer Information Program Part 575.106, March 2010 (Docket No. NHTSA–2010–0036–0002.1).

final estimates were submitted. Therefore, NHTSA believes that the estimated reporting costs in the March 2010 final rule accurately reflect the expected reporting costs associated with the amended reporting requirements established by today's final rule, which, like the proposed reporting system described in the NPRM, require TFECIP rating information to be submitted separately.

**B. Ongoing Reporting Requirements for New or Different Rating Information**

In addition to establishing initial reporting requirements for manufacturers, the March 2010 final rule established ongoing reporting requirements. Specifically, the final rule required a manufacturer who receives information that would determine new or different rating information for its tires to report the new or different rating information to NHTSA within 30 days of receiving the information. Additionally, the preamble to the NPRM and the preamble to the final rule stated that, after the initial reporting period, manufacturers would be required to submit information for new tires at least 30 days prior to introducing the tires for sale, as is required for UTQGS information.<sup>9</sup>

In its petition, RMA noted that the language of the preamble and the final rule appeared to be designed to address two situations: 1) reporting information for new tires entering the market, and 2) reporting revised rating information for existing tires. RMA recommended that NHTSA create separate requirements for these two situations and clarify the reporting requirements for each situation.

Regarding the reporting requirements for new tires, RMA supported the requirement, as stated in the preamble, that new tire information be submitted at least 30 days prior to introducing the tire for sale. Regarding the reporting requirements for

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<sup>9</sup> 49 CFR § 575.6(d)(2)(i).

revised rating information, RMA requested that NHTSA reconsider its requirement that such information be submitted no more than 30 days after the manufacturer receives information that would determine new or different rating information. RMA stated that when new information is received, the manufacturer will need time to analyze it, check its validity, and assess whether the information necessitates a change in rating information. RMA indicated that it would be impracticable to conduct such an assessment and prepare a submission to NHTSA within 30 days. RMA requested that the time period for reporting new or different rating information be revised to reflect that the 30 day period begins when the manufacturer makes a determination that a revised rating is necessary, rather than when the new information is received.

Agency Response – The agency is granting in part RMA’s request to amend the ongoing reporting requirements for tire manufacturers by creating separate requirements for each type of reporting situation. The agency is also granting in part RMA’s request to amend the required time period for reporting new or different rating information.

NHTSA agrees that the section of the final rule regarding ongoing reporting requirements does not clearly address the different situations where further reporting might be required following the submission of the manufacturer’s initial report, i.e., the introduction of new tires and the determination of new or different rating information for existing tires. Specifically, the final rule did not reflect the requirement, stated in the preamble, that manufacturers report rating information for new tires at least 30 days prior to introducing them for sale.

Accordingly, today’s document amends the ongoing reporting requirements by creating separate and distinct requirements for new tire information and revised rating

information. For new tire information, today's final rule adopts the requirement stated in the preambles to the NPRM and the March 2010 final rule, namely that manufacturers must report rating information for new tires to NHTSA at least 30 days prior to introducing the tires for sale. This requirement is consistent with the UTQGS requirements at 49 CFR § 575.6(d)(2)(i).

However, NHTSA believes that there are two different situations that could require a revised rating. One such situation, as noted by RMA, is where a manufacturer receives information regarding an existing tire indicating that revised rating information for that tire may be necessary. In such a situation, NHTSA agrees that 30 days is an insufficient amount of time for the manufacturer to assess the validity of the information and prepare a submission to NHTSA. However, the agency continues to believe that it is in consumers' best interests to have revised rating information reported in a timely manner, and we do not believe that RMA's proposed reporting period adequately ensures the timely reporting of such information. RMA's proposed reporting period would be based on each manufacturer's own timeline for determining whether revised rating information was necessary, with no specified limit on the length of the determination period. In balancing the need for timely reporting of revised information with the need for accurate information, the agency is expanding the reporting period from 30 days to 120 days from the date that the new information is received by the manufacturer. We believe that 120 days is a reasonable amount of time for the manufacturer to assess the validity of the new information, make a determination whether the rating information for the tire needs to be revised, and submit that revised information to NHTSA.

This additional time will allow the manufacturer to analyze the new information and make a reasoned determination as to whether a revised rating is necessary. For example, a test may indicate that the rating information for an existing tire is incorrect, but further review of the test might show a test anomaly that explains the results. In such a situation, although revision of the tire's rating might have been suggested by the initial test results, such revision is not actually necessary. Accordingly, amending the reporting period will help prevent the potential reporting of inaccurate rating information by allowing the manufacturer time to determine the validity of the new information it receives.

The other situation where a rating is revised is when design changes to a tire affect the accuracy of the rating information and necessitate the submission of revised rating information. Because a design change is initiated by the manufacturer, the agency does not believe that an extended reporting period is warranted. Because this situation is comparable to the introduction of an entirely new tire, NHTSA believes that it is reasonable to require the manufacturer to evaluate the design change's effect on the tire's rating information prior to introducing the redesigned tire for sale. Accordingly, NHTSA is requiring that when a manufacturer makes a design change to a tire that affects the accuracy of the rating information for that tire, the manufacturer must report the revised rating information to NHTSA at least 30 days prior to introducing the redesigned tire for sale.

### **C. Reporting Requirements for Exempted Tires**

EISA specifies that the tire fuel efficiency requirements are to apply only to replacement tires covered under 49 CFR 575.104(c).<sup>10</sup> Section 575.104 is the federal regulation that requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance. This section of NHTSA's regulations specifies the test methods to determine UTQGS, and mandates that these standards be molded onto tire sidewalls.

Section 575.104 applies only to new pneumatic tires<sup>11</sup> for use on passenger cars but does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or to limited production tires as defined in 49 CFR § 575.104(c)(2). Because EISA specifies that the TFECIP requirements are to apply only to tires covered by Section 575.104, these exclusions were adopted in the NPRM and final rule.<sup>12</sup> Additionally, the final rule explicitly excluded replacement light truck (LT) tires from the TFECIP because they are not passenger car tires and, accordingly, are not covered by Section 575.104.

The final rule also established reporting requirements for manufacturers of these excluded types of tires, collectively referred to as "exempted tires." Specifically, the final rule stated that each manufacturer must report all tire lines, size designations, and SKUs for the tires it manufactures which are exempted from the TFECIP. For manufacturers that are otherwise required to report rating information, the final rule

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<sup>10</sup> 49 U.S.C. § 32304A(a)(3).

<sup>11</sup> The term pneumatic tire is a broad one that essentially means air-filled tires (49 CFR § 571.139, New Pneumatic Radial Tires for Light Vehicles).

<sup>12</sup> We acknowledge that the technical term for rim diameter is "rim code." We have chosen to use the term "rim diameter" because that is the term used in Section 575.104(c), the regulation from which the exempted categories of tires are adopted.

stated that exempted tire information could be included with the rating information in the manufacturers' EWR submissions. For manufacturers that only produce exempted tires, the final rule required a one-time statement listing each one of the manufacturer's tire models (lines)/sizes, as well as a statement that each of its tire models (lines)/sizes is exempted from the applicability of the regulation and thus not rated. The preamble to the final rule explained that this information would be useful to consumers who wish to understand which tires are not rated and why, and, accordingly, would be made available on NHTSA's website. The agency determined that requiring the submission of such information would impose a minimal burden on manufacturers.

As discussed above, the final rule also established ongoing reporting requirements, which stated that a manufacturer who receives information that would determine new or different rating information must report the new or different rating information to NHTSA within 30 days. Additionally, the preamble to the final rule stated that when a manufacturer introduces a new tire model (line) or size that it believes to be exempted from the TFECIP, it must send a statement declaring this information to NHTSA at least 30 days before the tire is first offered for sale.

In its petition, RMA noted that the final rule could be interpreted as establishing only initial reporting requirements for exempted tires. Specifically, RMA cited to the requirement that exempted tire manufacturers submit a "one-time statement" listing their tires, asserting that the use of the term makes the reporting requirements unclear. RMA requested that NHTSA clarify the language of the final rule to make clear that the ongoing reporting requirements apply to exempted tire manufacturers, allowing them to

amend their statements to include new exempted tires and to remove listed tires that are no longer exempted.

Agency Response – The agency is granting RMA’s request to clarify the language of the reporting requirements to reflect that manufacturers of exempted tires must report information regarding new exempted tires as well as any new or different information regarding existing exempted tires.

The March 2010 final rule required that a manufacturer who only produces exempted tires submit a “one-time statement” listing the tires it manufactures and certifying that none of the listed tires are required to be rated. The final rule’s use of the term “one-time statement” was meant to distinguish the reporting requirements for manufacturers that only produce exempted tires from the requirements for manufacturers that produce both exempted and rated tires. The final rule permitted these latter manufacturers to submit information regarding their exempted tires with TFECIP rating information as part of their quarterly EWR statements. Accordingly, the use of the term “one-time statement” was not meant to exclude manufacturers of exempted tires from the ongoing reporting requirements.

However, NHTSA agrees that the language of the final rule does not clearly address the ongoing reporting requirements of exempted tire manufacturers. Specifically, the final rule did not reflect the requirement, stated in the preamble, that manufacturers report information for new exempted tires at least 30 days prior to introducing them for sale. Additionally, the final rule only required that new or different rating information be reported after the initial reporting period and did not include any reporting requirements for new or different information regarding exempted tires. The



reasoning behind requiring manufacturers to initially report information regarding their exempted tires is equally applicable to requiring manufacturers to report information for new exempted tires and new or different information for existing exempted tires. Such information would be useful to consumers who wish to understand which tires are not rated and why.

As explained above, today's final rule amends the reporting requirements for manufacturers of rated tires, eliminating the requirement that rating information be submitted with each manufacturer's EWR report, and thus removes the distinction in reporting frequency between manufacturers of both rated and exempted tires and manufacturers of only exempted tires. This final rule also amends the ongoing reporting requirements for tire manufacturers. Specifically, today's document creates separate requirements for reporting rating information for new tires and reporting new or different rating information for existing tires. Rating information for new tires and revised rating information for redesigned tires must be reported to NHTSA at least 30 days prior to introducing the tires for sale. Revised rating information for existing tires based on new information must be reported to NHTSA no more than 120 days from the date that the manufacturer receives information that would determine new or different ratings.

Because the agency's decision to separate the TFECIP reporting requirements from the EWR reporting requirements will result in a small cost increase to manufacturers, NHTSA reviewed the need for reporting information regarding exempted tires. The March 2010 final rule stated that the TFECIP does not apply to LT tires, deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or to limited production tires. The final rule required

that manufacturers report information on each of these categories of tires. After further review, NHTSA has decided to limit the categories of exempted tires for which information must be reported to the agency.

The purpose of reporting information on exempted tires is that it would be useful to consumers who wish to understand which tires are not rated and why. The agency acknowledges that some categories of exempted tires are already marked in ways that will allow consumers who examine the tires to understand why rating information is not available. For example, light truck tires are marked with the letters “LT”, “C”, “CP”, or “MPT” and space-saver or temporary use spare tires are marked with the letter “T.”

Likewise, each tire is marked with its rim diameter, so that consumers examining the tire will be able to identify tires with nominal rim diameters of 12 inches or less.

Accordingly, because these categories of tires already display identifiable markings distinguishing them from tires covered under the TFECIP, the agency is not requiring manufacturers to report information on tires within these categories. Instead, the agency is only requiring manufacturers to report information on deep tread, winter-type snow tires<sup>13</sup> and limited production tires. Tires within these categories may not display markings that would allow a consumer to readily determine that they were exempt from the TFECIP.

In order to clarify that exempted tire manufacturers are also subject to the ongoing reporting requirements, this final rule amends these requirements to reflect that manufacturers must submit identifying information for all new tires in the exempted

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<sup>13</sup> The agency notes that manufacturers may voluntarily use an “Alpine Symbol” to label certain tires that attain a particular traction index when using a specified snow traction test. 49 CFR 571.139. However, as use of the symbol is voluntary, NHTSA believes that requiring information on these types of tires to be reported is necessary to ensure that all deep tread, winter-type snow tires are identified as exempt from the rating requirements of the TFECIP.

categories listed above as well as any new or different information regarding existing tires in those categories. Such new or different information would include the fact that a listed exempted tire no longer qualifies as exempted. The ongoing reporting requirements for exempted tire information are the same as those for rated tires. Information for new exempted tires and revised information for redesigned tires must be reported to NHTSA at least 30 days prior to introducing the tires for sale. Revised information for existing tires based on new information must be reported to NHTSA no more than 120 days after the manufacturer receives the new information.

**D. Incorporation by Reference of ASTM E 501**

In the March 2010 final rule, the agency amended § 575.3, Matter incorporated by reference, to include a centralized index of all of the publications incorporated into Part 575. This was not intended to alter the substance of any references, but merely to consolidate all of the incorporations by reference contained in Part 575. The final rule also updated the existing information in § 575.3 to include new language regarding procedures for retrieving materials from the National Archives and Records Administration and a new format indicating the sections where incorporated materials were referenced. ASTM E 501 was one of the publications referenced in Part 575 prior to the promulgation of the March 2010 final rule, specifically in § 575.104(f), which describes the UTQGS test methods for traction grading. The final rule amended § 575.104(f) to reflect that ASTM E 501 was incorporated by reference, citing § 575.3.

In its petition, RMA noted that, despite the amended language of § 575.104(f), § 575.3 does not contain a citation for ASTM E 501. RMA requested that NHTSA include a citation for ASTM E 501 in § 575.3 and suggested that the reference should

state the full name of the standard, ASTM E 501-8, “Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests,” rather than simply ASTM E 501.

Agency Response – NHTSA is granting RMA’s request to include a citation for ASTM E 501 in § 575.3. Pursuant to 5 U.S.C. § 552(a) and 1 CFR Part 51, when NHTSA wishes to incorporate the standards and practices of other standardizing bodies into its regulations, it may incorporate those materials by reference instead of reproducing them verbatim. It must, however, obtain the approval of the Director of the Federal Register for each such incorporation. In preparation for the publication of the March 2010 final rule, NHTSA sought and received approval from the Director of the Federal Register to incorporate by reference various publications cited in the final rule, including ASTM E 501. However, the final rule unintentionally failed to include a citation for ASTM E 501 in § 575.3. Accordingly, today’s final rule adds a citation for ASTM E 501 in § 575.3. As suggested by RMA, the citation states the full name of the standard.

#### **E. Definition of “Replacement passenger car tire”**

As explained above, EISA specifies that the TFECIP requirements only apply to replacement tires covered under 49 CFR 575.104(c).<sup>14</sup> Section 575.104 specifies the test methods to determine UTQGS, and mandates that these standards be molded onto tire sidewalls.

Section 575.104 applies to new pneumatic tires for use on passenger cars with the exclusion of several particular types of tires.<sup>15</sup> Although most UTQGS requirements apply to all passenger car tires, whether sold as original equipment with a new

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<sup>14</sup> 49 U.S.C. § 32304A(a)(3).

<sup>15</sup> 49 CFR § 575.104(c)(1).

automobile (OE tires) or as replacement tires, some apply only to replacement tires. For example, the requirement for a paper label on the tire tread excludes tires sold as original equipment on a new vehicle.<sup>16</sup> Based on the statutory language and NHTSA's belief that Congress intended that the agency look to the UTQGS regulation for appropriate definitions of different types of tires, NHTSA used the language of Section 575.104 as the basis for the definition of replacement tires for the purposes of the TFECIP. Accordingly, the final rule defined "replacement passenger car tire" to include passenger car tires other than passenger car tires sold as original equipment on a new vehicle.

In its supplemental petition for reconsideration, Bridgestone requested clarification of the definition of "replacement passenger car tire," noting that, in some situations, new tires manufactured for the original equipment market are provided to consumers after the sale of a new vehicle at no cost to the consumer. According to Bridgestone, these tires are only available to tire retailers/installers to replace original equipment tires with the same specifications and are provided at no cost to the consumer pursuant to the terms of a consumer warranty contract or contractual agreement between the vehicle manufacturer and the tire manufacturer, or as an act of goodwill extended by the manufacturer or retailer. Bridgestone asked whether such tires are considered replacement tires under the final rule.

Agency Response – On reconsideration, NHTSA believes that tires that are only available to replace original equipment tires at no cost to consumers should not be considered replacement tires for the purposes of the TFECIP. The TFECIP is intended to inform consumers about the effect of their choices among replacement passenger car tires on fuel efficiency, safety, and durability. Section 111 of EISA explicitly states that the

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<sup>16</sup> 49 CFR § 575.104(d)(1)(i)(B).

purpose of the national TFE rating system is to assist consumers in making more educated tire purchasing decisions.<sup>17</sup> The types of tires described by Bridgestone are not available to consumers looking to purchase tires. Instead, these types of tires are provided at no cost to consumers to replace original equipment tires with the same specifications. Therefore, NHTSA believes that these types of tires are not within the intended scope of the TFECIP, and, accordingly, the agency is amending the definition of “replacement passenger car tire” to reflect that only passenger car tires that are offered for sale to consumers are considered replacement tires for the purposes of the program.

**F. Issues Not Decided by the March 2010 Final Rule**

The March 2010 final rule stated that the agency was delaying decision on a number of issues related to the TFECIP and would publish a supplemental NPRM addressing these issues. Among the issues not decided in the final rule were the rolling resistance metric to be used to determine the fuel efficiency rating, the determination of fuel efficiency, safety, and durability ratings from the performance information generated by the test methods, the selection of a reference laboratory and lab alignment tires to implement the rolling resistance test methods under ISO 28580, and the lead time for compliance with the final rule.

In its petition, RMA offered comments on these issues and requested an opportunity to review future rules related to the TFECIP and potentially petition for reconsideration on areas covered by the March 2010 final rule that are affected by such future rules.

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<sup>17</sup> 49 U.S.C. § 32304A(a)(2)(A).

Agency Response – Because the remaining issues commented on by RMA are outside the scope of the final rule, the agency will consider these comments in future rulemaking activities.

### **III. Regulatory Notices and Analyses**

This rule makes several changes to the regulatory text of 49 CFR Part 575. The agency has already discussed the relevant requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211(Energy Effects) in the March 2010 final rule. Those discussions are not affected by these changes.

#### **A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures**

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation’s regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, “Regulatory Planning and Review.” It is not considered to be significant under E.O. 12866 or the Department’s Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document amends the reporting requirements of the TFECIP. The agency has already prepared a FRIA for the March 2010 final rule and placed it in the docket for that rule as well as the agency’s website. The agency believes that the estimated

reporting costs contained in the FRIA accurately reflect the expected reporting costs with the modifications made in today's final rule. These costs include start-up costs of almost \$400,000, and annual reporting costs of approximately \$113,000. For a further explanation of the estimated costs, see the FRIA provided in the docket for the March 2010 final rule.

#### **B. Paperwork Reduction Act**

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule amends the reporting requirements for tire manufacturers under the new consumer information program at 49 CFR Part 575.106, Tire fuel efficiency consumer information program. Accordingly, NHTSA is submitting a request to OMB for approval of the following collection of information.

In compliance with the PRA, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden. This is a request for new collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 575.106, Tire fuel efficiency consumer information program.

Type of Request: New collection.

OMB Clearance Number: Not assigned.

Form Number: The collection of this information will not use any standard forms.



Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

In the March 30, 2010 final rule, NHTSA established reporting requirements for the TFECIP. In response to petitions for reconsideration, NHTSA is amending those requirements. Tire manufacturers and tire brand name owners would be required to rate all replacement passenger car tires for fuel efficiency (i.e., rolling resistance), safety (i.e., wet traction), and durability (i.e., treadwear), and to submit identification information and ratings for each tire to NHTSA. The ratings for safety and durability are based on test procedures specified under the UTQGS traction and treadwear ratings requirements. The required identification information for rated tires includes the manufacturer's name, the brand name owner (if different than the manufacturer), the tire line, the SKU, and the tire size. Additionally, manufacturers and tire brand name owners would be required to submit information on the tire lines, SKUs, and size designations for certain exempted tires that they produce.

The information would be used by consumers of replacement passenger car tires to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (i.e., rolling resistance), safety (i.e., wet traction), and durability (i.e., treadwear) in making their purchase decisions. Information on exempted tires would be used to inform consumers which tires are not rated and why.

Description of the Need for the Information and Use of the Information

NHTSA needs the information to provide consumers information in order to allow them to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (i.e., rolling resistance), safety (i.e., wet traction), and

durability (i.e., treadwear) in making their purchase decisions. NHTSA needs the information on certain exempted tires to inform consumers which tires are not rated and why. Tires within these categories may not display markings that would allow a consumer to readily determine that they were exempt from the TFECP.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

There are approximately 28 manufacturers of replacement passenger car tires sold in the United States. Each manufacturer would be required to submit to NHTSA a one-time list containing identification and rating information for each covered tire it manufactures as well as identification information for certain exempted tires it produces. Additionally, each manufacturer would be required to submit the same information for each new tire it introduced, as well as any new or different information for its existing tires.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

NHTSA believes that the estimated reporting costs contained in the final rule accurately reflect the expected reporting costs with the modifications made in today's final rule. The agency estimates that there are 28 tire manufacturers that will be required to report information. Each of these will need to set up the software in a computer program to combine the testing information, organize it for NHTSA's use, etc. We estimate this cost to be a one-time charge of about \$10,000 per company. Based on the costs used in the Early Warning Reporting Regulation analysis,<sup>18</sup> we estimate the annual

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<sup>18</sup> Preliminary Regulatory Evaluation, Tread Act Amendments to Early Warning Reporting Regulation Part 579 and Defect and Noncompliance Part 573, August 2008 (Docket No. NHTSA-2008-0169-0007.1).

cost per report per tire manufacturer to be \$287. There are also computer maintenance costs of keeping the data up to date, etc., as tests come in throughout the year. In the EWR analysis, we estimated costs of \$3,755 per year per company. Thus, the total annual cost is estimated to be \$4,042 per company. Accordingly, the total costs would be  $\$280,000 + \$113,176 = \$393,176$  for the first year and \$113,176 as an annual cost for the 28 tire manufacturers.

The largest portion of the cost burden imposed by the TFECIP arises from the testing necessary to determine the ratings that should be assigned to the tires. As detailed in the FRIA, our per-SKU costs to test for rolling resistance, traction, and treadwear amount to \$1,180 (i.e.  $\$180 + \$500 + \$500$ ). This would result in testing costs of \$22,420,000 in the first year (19,000 SKUs) and \$3,801,960 in subsequent years (3,222 new SKUs annually).

The estimated annual cost to the Federal government is \$1.28 million. This cost includes \$730,000 for enforcement testing, and about \$550,000 annually to set up and keep up to date a website that includes the information reported to NHTSA.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.

- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17<sup>th</sup> Street, NW, Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **FEDERAL REGISTER**.

The agency recognizes that the collection of information contained in today's final rule may be subject to revision in response to public comments and the OMB review.

#### **C. Regulation Identifier Number (RIN)**

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### **D. Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on

April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit

<http://www.dot.gov/privacy.html>.

### **List of Subjects in 49 CFR Part 575**

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA is amending 49 CFR Part 575 as follows:

### **PART 575 – CONSUMER INFORMATION**

1. The authority citation of Part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104-414, 114 Stat. 1800, Pub. L. 109-59, 119 Stat. 1144, Pub. L. 110-140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

2. Amend § 575.3 by redesignating paragraphs (c)(1) and (c)(2) as (c)(2) and (c)(3), respectively, and adding new paragraph (c)(1) to read as follows:

#### **§ 575.3 Matter incorporated by reference.**

\* \* \* \* \*

(c) \* \* \*

(1) ASTM E 501-08 (“ASTM E 501”), “Standard Specification for Standard Rib Tire for Pavement Skid-Resistance Tests” (June 2008), IBR approved for § 575.104 and § 575.106.

\* \* \* \* \*

3. Amend § 575.106 by adding, in alphabetical order, the following definition of “Manufacturer” in paragraph (d)(2), revising the definitions of “Replacement passenger

car tire” and “Tire line” in paragraph (d)(2), and revising paragraphs (e)(1)(i)(C)(1) through (4) to read as follows:

**§ 575.106 Tire fuel efficiency consumer information program**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

Manufacturer means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

\* \* \* \* \*

Replacement passenger car tire means any passenger car tire offered for sale to consumers, other than a passenger car tire sold as original equipment on a new vehicle.

\* \* \* \* \*

Tire line means the entire name used by a tire manufacturer to designate a tire product including all prefixes and suffixes as they appear on the sidewall of a tire.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) \* \* \*

(C) \* \* \*

(1) Subject to paragraph (e)(1)(iii) of this section, manufacturers of tires or, in the case of tires marketed under a brand name, brand name owners of tires subject to this section shall submit to NHTSA, either directly or through an agent, the following data for each rated replacement passenger car tire:

- (i) Manufacturer or Brand name owner.
- (ii) Tire line.
- (iii) SKU.
- (iv) Tire size.
- (v) Rolling resistance rating, as determined in paragraph (e)(2)(i) of this

section.

- (vi) Wet traction rating, as determined in paragraph (e)(2)(ii) of this section.
- (vii) Treadwear rating, as determined in paragraph (e)(2)(iii) of this section.

(2) Format of data submitted. The information required under paragraph (e)(1)(i)(C)(1) of this section may be submitted to NHTSA by mail, by facsimile, or by e-mail. Submissions by mail must be addressed to the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, Attention: Consumer Standards Division (NVS-131), 1200 New Jersey Avenue, SE, Washington, DC 20590. Submissions by facsimile must be addressed to the Associate Administrator for Rulemaking and transmitted to (202) 366-7002. Submissions by e-mail must be sent to [TFE.Reports@dot.gov](mailto:TFE.Reports@dot.gov).

- (3) Exempted tires.

(i) Each manufacturer of tires or, in the case of tires marketed under a brand name, brand name owner of tires subject to this section shall submit to NHTSA all tire

lines, size designations, and stock keeping units for deep tread, winter-type snow tires and limited production tires that it manufactures which are exempt from this section (§ 575.106) under paragraph (c) of this section.

(ii) Where a manufacturer or brand name owner is required to report ratings under this section, the information required in paragraph (e)(1)(i)(C)(3)(i) of this section may be submitted with the ratings information reported in accordance with paragraph (e)(1)(i)(C)(1) of this section.

(iii) Where a tire manufacturer or, in the case of tires marketed under a brand name, brand name owner only manufactures tires that are exempt from this section under paragraph (c) of this section, that manufacturer or brand name owner shall submit a statement listing the information specified in paragraph (e)(1)(i)(C)(3)(i) of this section and certifying that none of the tires it manufactures are required to be rated under this section.

(4) New ratings information.

(i) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner introduces a new tire for sale, the tire manufacturer or brand name owner shall submit either the information required under paragraph (e)(1)(i)(C)(1) of this section or the information required under paragraph (e)(1)(i)(C)(3) of this section for the tire to NHTSA on or before the date 30 calendar days before the tire is first introduced for sale.

(ii) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner makes a design change to a tire that would result in new or different information required under either paragraph (e)(1)(i)(C)(1) or paragraph



(e)(1)(i)(C)(3) of this section for the tire, the tire manufacturer or brand name owner shall submit the new or different information to NHTSA on or before the date 30 calendar days before the redesigned tire is first introduced for sale.

(iii) Whenever a tire manufacturer or, in the case of tires marketed under a brand name, a brand name owner receives information that would determine new or different information required under either paragraph (e)(1)(i)(C)(1) or paragraph (e)(1)(i)(C)(3) of this section for a tire, the tire manufacturer or brand name owner shall submit the new or different information to NHTSA on or before the date 120 calendar days after the receipt of the new information by the tire manufacturer or brand name owner.

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Issued on: December 14, 2011

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David L. Strickland  
Administrator

Billing Code: 4910-59-P

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